

Victim Services & Restitution Update

Making a Difference for Victims...

VICTIM RESTITUTION

ATTENTION ALL CALIFORNIA CRIME VICTIMS!!!

Do you know that you have a constitutional right to restitution? It's true! The California Constitution, Article I, Section 28 (b) states:

"Restitution: It is the unequivocal intention of the people of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crime for losses they suffer. Restitution shall be ordered from the convicted person in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary..."

There it is in glossy print: all persons who suffer as a result of criminal activity shall have the right to restitution from the person convicted for losses they suffered. Simply stated, it says that a judge must order the defendant to pay the victim for out-of-pocket expenses incurred as a result of the crime. This is called a direct order of restitution. It equally applies to victims of property crime such as vandalism as well as to victims of serious violent felonies such as child molestation, rape, kidnapping, or homicide. The judge has the authority to order the true amount of the victim loss. There is no dollar limit.

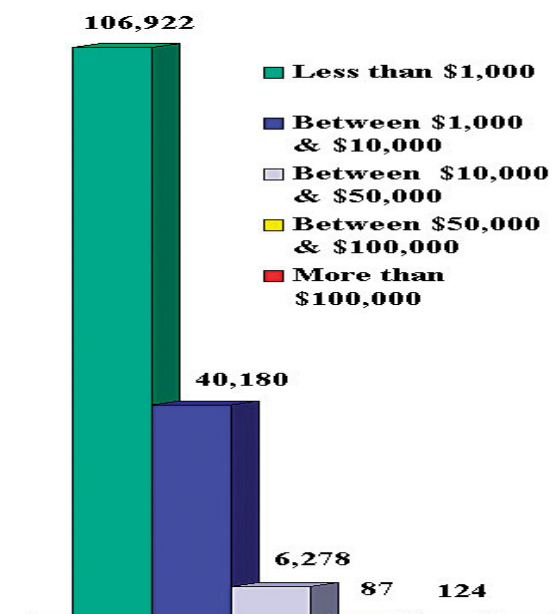
So some of you are saying this is fine and dandy for those victims whose offender was convicted. What about me? My offender was never apprehended and/or brought to trial and I suffered out-of-pocket expenses. Am I out of luck? Not necessarily. In 1965 California was the first state to enact the Victims of Violent Crime Act. This act provides compensation to persons who suffered out-of-pocket expenses as a result of a violent crime.

The program is administered by the California Victim Compensation and Government Claims Board (aka "Board"). The Board reviews applications from crime victims and decides whether or not they are eligible for compensation under the Act. For more information regarding compensation, please call their toll free number at 1-800-777-9229.

How does the Board get money to compensate these crime victims? Guess again if your answer was taxes. The money used to compensate crime victims comes from restitution fines.

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What Inmates Owe



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Victim-Witness Request for Notification of Criminal Alien Status

The Office of Victim Services and Restitution (OVSR) frequently receives calls from victims whose offenders have paroled to the custody of the Bureau of Immigration and Customs Enforcement (ICE), formerly known as the Immigration and Naturalization Service (INS). The INS was renamed and placed under the jurisdiction of the Department of Homeland Security effective March 1, 2003. Victims are eager to obtain information concerning alien status, and OVSR is able to acquaint them with the ICE Victim-Witness Notification Program that has been established allowing victims of crime to be notified relative to the custody, bond or deportation of alien offenders.

The OVSR relays the toll-free number (1-866-872-4973) of the Victim-Witness Notification Program, to its callers, and also provides the Offender Alien Number. This number is the means of identification of the offender, and once contacted, ICE forwards a request form to the victim or witness for notification of criminal alien status. The OVSR is pleased to have the opportunity to assist victims of crime with respect to the issues surrounding deportation.



**SAVE THIS DATE!!!
THE WEEK OF
APRIL 18 - 24, 2004
NATIONAL CRIME VICTIMS'
RIGHTS WEEK**

Legislative News Impacting Crime Victims

The following two bills were selected as being of interest to crime victims.
Current status of each bill is featured in blue.

AB 283

Addresses the issue of a victim receiving financial compensation as the result of a crime committed against them. Most victims could not receive more than \$35,000 unless federal funds are available. In cases where federal funds *are* available, the amount *may be* increased with the cap becoming \$70,000. **Status:** This is considered an Active bill with a non-urgency status.

AB 1760

Examines whether the Victim Compensation and Government Claims Board has enough money to cover all claims submitted in January of each year, through January 1, 2007, for the next fiscal year. If insufficient funds are available, the Board must determine the percentage necessary to reduce awards and payments. **Status:** This bill is Active with an urgency status.



The Internet site for current information is leginfo.ca.gov and can be viewed by author, revisions, and status. Bills can change daily based on the desire of the author, voting and the need to merge similar language. It is always best to verify status daily to determine if a bill has been chaptered into law.

Retraction From Summer 2003 Issue

While content information was accurate, the bills had not been signed into law.

SB 356

Allows police departments of any school district to receive sex offender registry information from the Department of Justice and to be notified of high-risk sex offenders in their community. **Status:** Third Reading

SB 422

This bill provides 1) Internet access to the Sex Offender Registry, and 2) converts current "900" telephone service for Sex Offender Registry information into an "800" telephone service. **Status:** Amended: referred to committee.

AB 726

Eliminates the January 1, 2004 sunset date for "Megan's Law" and requires the Department of Justice (DOJ) to make sex offenders' information available on the Internet. Posting offender's home address or the name/ address of his/her employer is not permitted. **Status:** Hearing cancelled by author.

SB 423

Requires law enforcement entities to inform the public of the presence of high-risk sex offenders in the community. **Status:** Hearing postponed by committee.

SB 880

Makes the intentional murder of a child under the age of 14 a special circumstance qualifying for the death penalty. **Status:** Failed passage in committee.

SB 991

Requires that as a condition of parole an offender who has committed a sexual crime against a victim under 18 years of age, be prohibited from being within 500 feet from, or loitering near a school, park, shopping mall, child day care center, or other location where children regularly congregate. **Status:** Failed passage in committee/ reconsideration granted.

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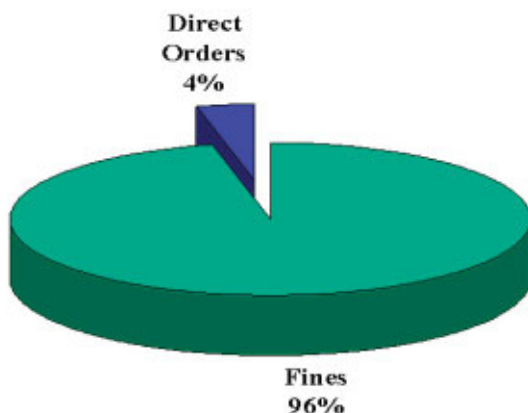
These fines are imposed by judges at the time of sentencing, and are applied to all defendants regardless if the sentence is probation or a state prison commitment. Unlike the direct orders of restitution discussed earlier, there is a dollar limit a judge can impose. The minimum amount is \$100 and the maximum is \$10,000. A formula is available to assist the judge in determining the appropriate dollar amount to order.



The California Department of Corrections (CDC) has collected more than \$60 million dollars in restitution to date. CDC transfers the restitution collected from inmates and parolees to the Board. The Board then reimburses the Victim Compensation Fund from monies identified as “restitution fines” or will disburse a check to victims from monies identified as “direct orders”.

True or False? The restitution fine money equals that of the direct order money collected every month. Sad to say this is false. The chart below illustrates that more restitution fine money is collected than direct order money.

Percentage of Collections



A survey conducted by the Office of Victim Services and Restitution (OVSR) showed that in 96% of the cases restitution fines were ordered compared to only 8% for direct orders. A few reasons for this disparity:

- Judges do not have the information regarding the victim's loss available at the time of sentencing.
- Victims are not aware of their constitutional right to restitution or how the collection process works.

Recognizing that there are training needs at all levels, OVSR has embarked on a massive outreach program. Staff travel throughout the state to provide restitution information to probation officers, parole agents, district attorneys, victim advocates, and judges. Coming this year, OVSR will be providing training to victim organizations. If you would like to receive this FREE training, please call our toll free number at 1-888-562-5874 and ask for Jennifer Bawden.

Direct Order Facts

The direct order process is the method used to give victims their constitutional right to restitution from the person(s) who have committed the crime against them.

From Penal Code 1202.4:

The court must award restitution to the victim(s) in the full amount of economic losses, including but not limited to:

- Full or partial payment for the value of stolen or damaged property.
- Medical expenses.
- Mental health counseling expenses.
- Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

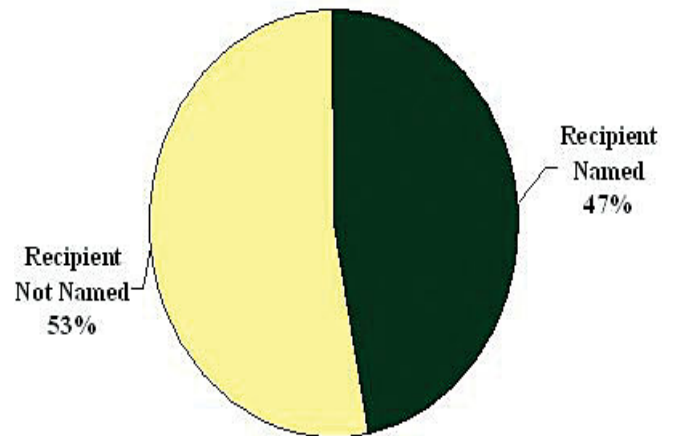
- *Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.*
- *If the conviction is for a felony violation of Section 288 (child molestation), the court may order restitution for non-economic losses, including, but not limited to psychological harm.*

A restitution order may be reduced and/or waived only if the court finds compelling and extraordinary reasons and states those reasons on the record. A defendant's inability to pay is not considered a compelling and extraordinary reason, nor is inability to pay to be considered in determining the amount of a restitution order. (See Penal Code Section 1202.4(g)).

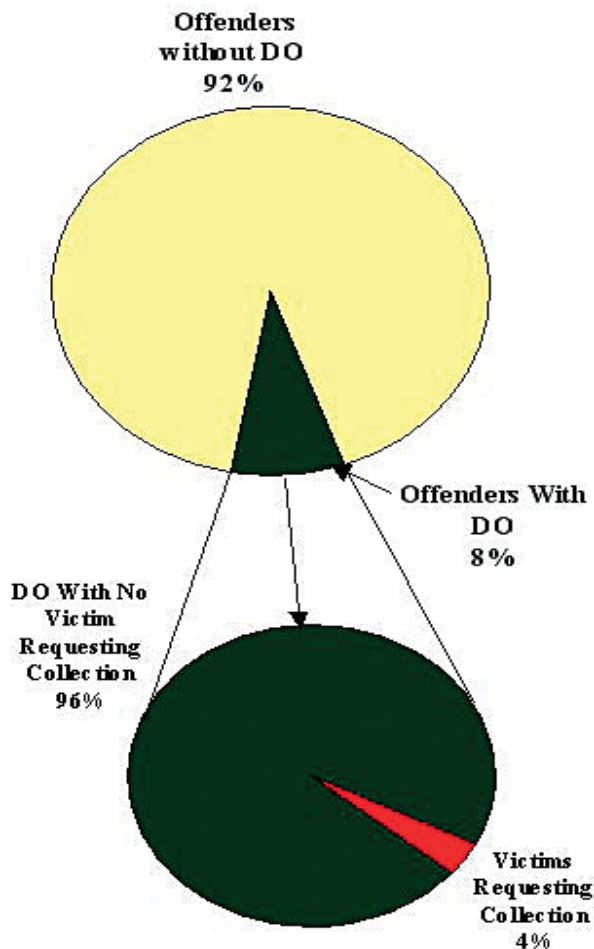
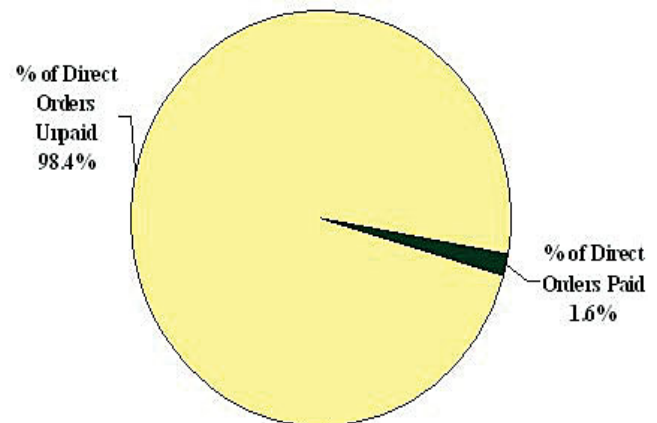
Although a judge or jury may award money to a victim, it does not guarantee that the victim will collect the money.

Although the law calls for a Direct Order whenever a victim has economic loss from crime OVSR finds a lack of Direct Orders. Further, the law requires that victims with Direct Orders request collection.

Most often when Direct Orders are written, the victim who is to receive the collection is not named as recipient in the court orders.



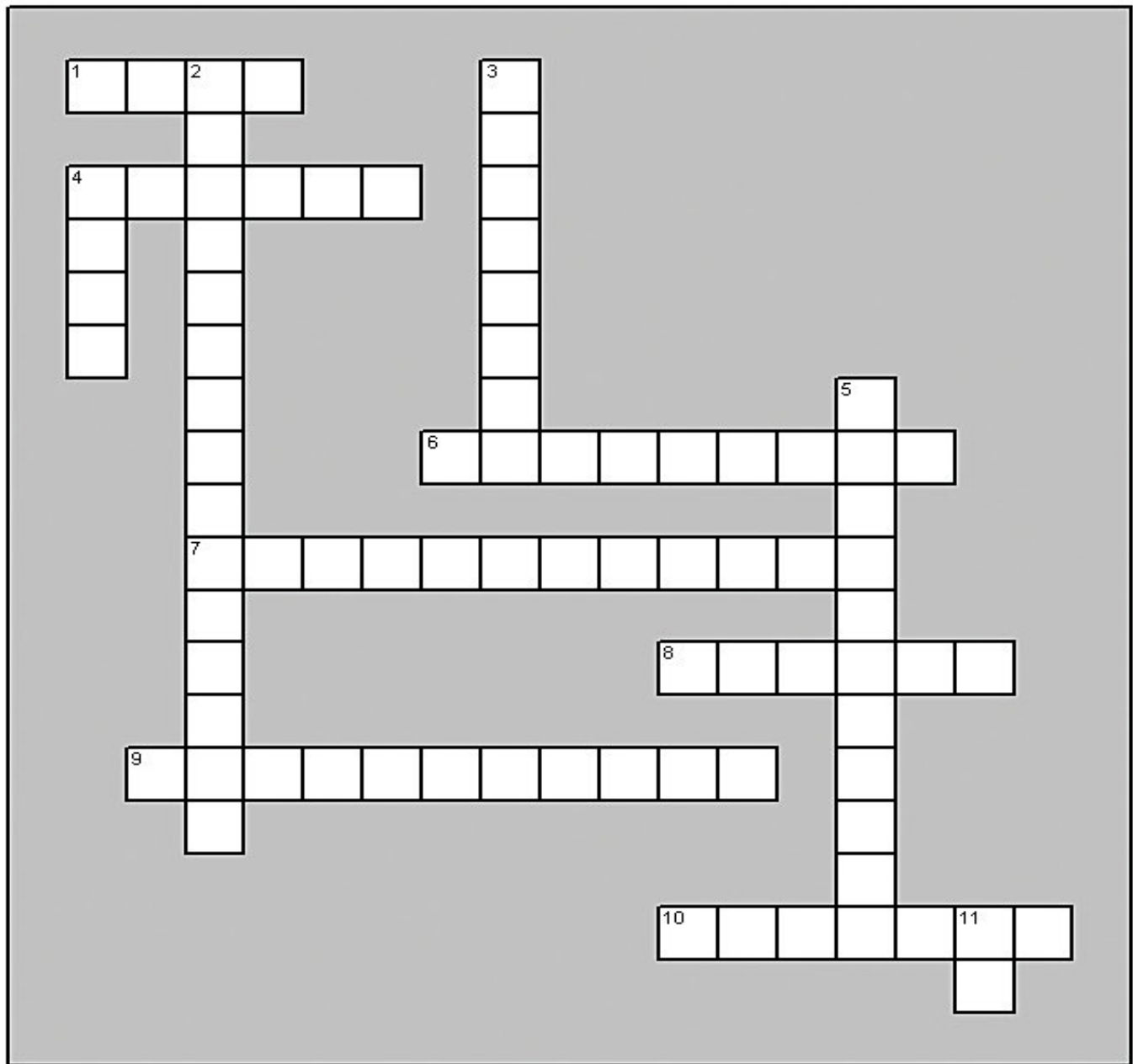
The percentage of all Direct Orders paid off is quite low, though CDC just began these collections in 1998.



COMING SOON!!!

To reserve your copy of our new Victims' Guide: *Helping Crime Victims* call our toll free number at (888) 562-5874.

Test Your Knowledge...



Across

1. Earliest Possible Release Date
4. A person against whom a crime has been committed
6. Period of time supervised by parole agent
7. Something required or ordered by the court
8. Release from incarceration
9. Amount of money the court orders an offender to pay victim
10. Confinement of offender

Down

2. Institution where offenders are housed pending placement in prison
3. Individual confined to jail or prison
4. Victim Identification and Notification Everyday
5. Portion of time offender is eligible to earn
11. Person elected to prosecute those accused of committing a crime

Questions And Answers

Q: What is the difference between a restraining order and a No Contact order?

A: A restraining order is issued by a judge for a specified period of time and is recognized by all law enforcement agencies. Conversely, a No Contact order is requested via CDC Form 1707 and is part of the parolee's terms and conditions; it is only effective while the parolee is under the supervision of CDC. Once the parolee discharges, the No Contact order is no longer valid.

Q: How do I serve a restraining order against an inmate?

A: Send the certified restraining order, and a self-addressed stamped envelope (for the return of the Proof of Service) to the attention of the Litigation Coordinator at the institution where the inmate is housed. The Litigation Coordinator will ensure the inmate is properly served with the order.

“Justice will only be achieved when those who are not injured by crime feel as indignant as those who are.”

King Solomon

Do You Want To Meet With Your Offender?

Victim/Offender Mediated Dialogue (VOMD) is a process to provide victims of violent crime the opportunity to meet with their offender in a secure environment in order to facilitate a healing, recovery, or reordering in their lives. The OVSR, in concert with National Institute of Corrections (NIC), is in the process of developing policies and procedures to guide the implementation of a victim/offender mediated dialogue by trained facilitators under the oversight of OVSR. Several OVSR staff, along with eleven additional individuals, recently completed an intensive weeklong NIC training, and are NIC qualified to facilitate the highly structured victim/offender dialogues.

A pilot VOMD project will be launched at California State Prison, San Quentin Reception Center (SQ) with the cooperation of SQ Warden J.S. Woodford. Once our pilot project is under way, OVSR will develop the necessary data required to assess and evaluate the project prior to expanding the project to other institutions.

OVSR is currently seeking victims of crime who are interested in participating in a supervised face-to-face meeting with their offender and the offender is housed at San Quentin. The meetings are victim driven and can only take place if the offender is willing to admit their guilt. Offender initiated requests will not be considered. If you are a crime victim and/or next of kin and are interested in meeting with your offender, or if you would like additional information regarding the VOMD process, please contact Wendy Sanchez at 1-888-562-5874 or by e-mail at wendy.sanchez@corr.ca.gov.



Let Us Know . . .

If there is a service of the Office of Victim Services and Restitution that you would like to know more about or if you would like clarification on a certain process, let us know. We will use your ideas for future articles in the OVSR Update. Please contact us by one of the following:

Website: www.corr.ca.gov/VictimServices

E-Mail: ovsrinet@corr.ca.gov

Phone: (916) 358-2436 or Toll Free 1-888-562-5874

Mail: California Department of Corrections
ATTN: Office of Victim Services and Restitution
P. O. Box 942883
Sacramento, CA 94283-0001

Answers: Across 1. EPRD 4. Victim 6. Probation 7. Courtordered 8. Parole 9. Restitution 10. Custody
Down 2. Receptioncenter 3. Offender 4. Vine 5. Goodconduct 11. DA



Attn: Office of Victim Services and Restitution
California Department of Corrections
P. O. Box 942883
Sacramento, California 94283-0001

Address Label